2 Otto 687

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 913.

THE UNITED STATES, APPELLANTS,

vs.

J. B. BRABSTON.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 26, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 913.

THE UNITED STATES, APPELLANTS,

vs.

J. B. BRABSTON.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed March* 31, 1868.

United States Court of Claims.

J. B. BRABSTON
vs. } 3196.
UNITED STATES.

To the honorable Court of Claims of the United States:

The petition of J. B. Brabston, a citizen of the United States, residing on his plantation, near Big Black Bridge, in Warren County, State of Mississippi, showeth:

That in the month of May, 1863, he owned and had in his possession (32) thirty-two bales of cotton, stored on his plantation, in said Warren county, and averaging 440 lbs. to the bale.

That in the latter part of May, 1863, to wit, on the 24th day of said month, all this lot of thirty-two bales of cotton was seized and taken by certain soldiers under the command of an officer belonging to the Army of General Grant, who removed said cotton by force, and without the consent of your petitioner, and against his will, to be temporarily employed, as your petitioner was informed and believes, in the formation of road-crossings or bridges; that afterwards, and subsequent to the surrender of Vicksburg to General Grant, various parcels of cotton so used were ordered to be turned over to the Treasury agent, and
2 parties were employed to collect the same, including the said thirty-two bales belonging to your petitioner, which were brought in by the steam rail-cars in charge of one ———, and by him delivered to C. A. Montross, special Treasury agent at Vicksburg, who shipped all of said cotton to the consignment of W. P. Mellen, Cincinnati, Ohio, under whose orders it was sold, and the proceeds paid into the Treasury of the United States.

Your petitioner avers that said cotton was never abandoned or forfeited, or liable to seizure under any act of Congress in that behalf provided, and that it was not liable to seizure under the usages of war, and that no proceedings for the purpose of condemning said cotton have ever been instituted before any court or before any tribunal.

Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, shipment, transportation, and sale thereof, but the same was of the value of about three hundred dollars ($300) per bale, and would have netted, in his hands, the sum of ninety-six hundred dollars, and he believes that the said amount was received by the agents of the Treasury Department on the sale thereof, and the same paid into the Treasury of the United States.

Your petitioner further avers that his property, aforesaid, having been taken possession of by the United States Government, and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor by paying all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid, and he avers that said cotton was worth at the time of its seizure three hundred dollars ($300) per bale, which, under the implied contract aforesaid, he is entitled to receive from the United States.

Your petitioner further shows that if there has been a lawful and valid capture of said cotton, which he denies, but which he understands
3 is asserted by the United States, then he is nevertheless entitled to receive the net proceeds thereof, amounting, as aforesaid, to the sum first above mentioned, of ninety-six hundred dollars, ($9,600,) under the provisions of an act of Congress entitled "An act to provide

for the collection of abandoned property, and for the prevention of fraud in insurrectionary districts within the United States."

And your petitioner further avers and shows that he has never, in any manner, encouraged and abetted or given aid or comfort to the rebellion, or to the enemies of the Government of the United States, but on the contrary, has borne true allegiance and faithful support to said Government.

J. B. BRABSTON,
By B. D. WHITNEY,
His Attorney in Fact.

Benjamin D. Whitney, of Washington City, above-named attorney in fact for the *the* said J. B. Brabston, being duly sworn, deposes and says, that said J. B. Brabston is the claimant named in the foregoing petition; that no assignment or transfer has been made; that the said J. B. Brabston is justly entitled to the amount as above claimed from the United States, subject to any just and lawful deductions, and that the facts stated in the foregoing petition are true according to the best of his knowledge, information, and belief.

B. D. WHITNEY.

Subscribed and sworn to before me, the undersigned, this 20th day of March, A. D. 1868.

JOHN RANDOLPH,
Assistant Clerk of Court of Claims.

C. CUSHING, *Petitioner's Counsel, Washington, D. C.*

4 In the United States Court of Claims, December term, A. D. 1867.

J. B. BRABSTON
vs.
THE UNITED STATES. } No. 3196.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of nine thousand six hundred dollars, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said Government, the said defendants deny the truth of said allegation, and call for proof thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

Filed May 21, 1868.

5 In the Court of Claims.

J. B. BRABSTON
vs.
THE UNITED STATES. } 3196.

At a Court of Claims held at the Capitol, in the city of Washington, the 24th day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of

the claimant, and do order, adjudge, and decree that the said J. B Brabston, claimant, do have and recover of and from the United States the sum of five thousand six hundred and eighty-one dollars and sixty cents, ($5,681\frac{60}{100}$,) being the net proceeds of thirty-two bales of cotton, at $177\frac{55}{100}$ per bale.

By the court.

A true copy of record.

6 In the Court of Claims of the United States, Dec. term, 1874.

J. B. BRABSTON *vs.* THE UNITED STATES. } No. 3196.

From the judgment rendered in the above-entitled cause on May 24, 1875, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed August 19, 1875.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

7 United States Court of Claims.

SUNDRY COTTON-CASES.

Order of the court, made May 24, 1875.

On the motions to confirm the reports of Special Commissioner Eveleth, bearing date, respectively, the 2d day of March, 1875, and the 6th day of April, 1875, and the 21st day of April, 1875, after hearing counsel for the respective claimants and for the defendants, and after due consideration of the evidence offered in all of such cases—

It is ordered and directed that the said reports be, and are hereby, amended in the following particulars:

1. The first fund, consisting of Vicksburgh and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30. The number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale which parties should recover will stand at $177.55 per bale.

The cases of—

James J. Persons, assignee, vs. The United States, (No. 3372,)
Daniel D. Dohan vs. Same, (No. 3557,)
Eliza A. Cochran vs. Same, (No. 3508,)
William E. Hall vs. Same, (No. 3423,)
Mary E. Bledsoe, guardian, vs. Same, (No. 3477,)
Martha Crane vs. Same, (No. 3554,)

are stricken out of the report and remanded to the general docket, with leave to both parties, claimant and defendant, to take further evidence, but upon condition that if any of the cases hereafter be brought to trial, and the claimant recovers out of the funds set forth in the re-

port, the claimant, before judgment, shall pay to the commissioner his fees and expenses at the rate hereinafter prescribed for claimants whose cases are now prosecuted to judgment.

The cases of—
A. Perryman vs. The United States, (No. 3231,)
Anson Wolcott vs. Same, (No. 3345,)
Susan Bolls vs. Same, (No. 3193,)
Mrs. V. O. West vs. Same, (No. 3198,)
Sylvia A. Perry vs. Same, (No. 3255,)
T. C. A. Dexter vs. Same, (No. 3465,)
are remanded to the commissioner, but on condition that if it hereafter appear that they are entitled to relief out of the two funds now disposed of, the petitions shall be dismissed and they are stricken out of this report.

In the cases of—
James A. Fox vs. The United States, (No. 3236,)
Jesse B. Ferguson vs. Same, (No. 3258,)
E. H. Pace vs. Same, (No. 3468,)
John Harod vs. Same, (No. 3472,)
Mrs. A. Smith vs. Same, (No. 3178,)
J. E. Fore vs. Same, (No. 3256,)
Joseph C. Jones vs. Same, (No. 3504,)
8 Cornelius T. Cunningham vs. Same, (No. 3370,)
Solomon Galinger vs. Same, (No. 3440,)
the report of the commissioner is confirmed, and judgment will be entered dismissing the petitions of the respective claimants.

In the case of Mrs. Nanette Switzer (late Abell) vs. The United States, (No. 3169,) the report of the commissioner is confirmed as to 73 bales of the cotton claimed, and the remaining 27 are found on the evidence to have been the property of the confederate government at the time of capture, and are now adjudged to be the property of the United States.

In the case of James A. Hutchinson vs. The United States, (No. 3499,) the report of the commissioner is confirmed as to 42 bales of the cotton claimed, and the remaining 23 bales are found on the evidence to have been the property of the confederate government at the time of capture, and are adjudged to be the property of the United States.

In the case of Joel H. Willis's administrator vs. The United States, (No. 3186,) the report of the commissioner is not confirmed, and the claimant is found on the evidence not to have proved the capture of the cotton sought to be recovered, and judgment will be entered dismissing the petition.

In the case of Seth H. Kellogg vs. The United States, (No. 3229,) the report is not confirmed as to the title of the claimant to the cotton sought to be recovered, and the evidence relied upon by the commissioner is excluded as incompetent. The case will be remanded to the general docket, with leave to the parties to give further evidence as to the title of the claimant and his vendors, John Buckingham & Co., to the cotton in suit, upon condition that, if the case be hereafter brought to trial, the claimant shall before judgment pay to the commissioner his fees and expenses at the rate hereinafter provided.

And it is further ordered that in the following cases the report of the commissioner be confirmed and judgment be entered in favor of the respective claimants for the quantity of cotton reported by the commissioner at the rates fixed by the foregoing amendments to his report:

FIRST FUND, AT $177.55 PER BALE.

Robert G. Johnson vs. The United States, (No. 2539,) 149 bales.
Ellen D. Balcheldor vs. Same, (No. 3150,) 51 bales.
John H. Newman vs. Same, (No. 3162,) 50 bales.
E. K. McLean vs. Same, (No. 3170,) 21 bales.
Thomas Y. Berry, administrator, vs. Same, (No. 3171,) 149 bales.
Juliet Glass vs. Same, (No. 3174,) 18 bales.
J. Reese Cook vs. Same, (No. 3175,) 40 bales.
Thomas A. Marshall vs. Same, (No. 3176,) 22 bales.
Richard Taylor vs. Same, (No. 3179,) 6 bales.
Thomas Kidd, guardian, vs. Same, (No. 3182,) 64 bales.
James Stewart vs. Same, (No. 3183,) 70 bales.
Charlotte Spear vs. Same, (No. 3184,) 70 bales.
Mary P. Marye's administrator vs. Same, (No. 3188,) 45 bales.
Thomas Kidd vs. Same, (No. 3191,) 480 bales.
Hiram Harrison vs. Same, (No. 3192,) 200 bales.
Duff Green vs. Same, (No. 3194,) 19 bales.
J. B. Brabston vs. Same, (No. 3196,) 32 bales.
Sarah Cowan vs. Same, (No. 3197,) 48 bales.
E. B. Willis vs. Same, (No. 3199,) 40 bales.
Emma J. Jones vs. Same, (No. 3293,) 100 bales.
Henry Bodenheim vs. Same, (Nos. 3354 & 3180,) 90 bales.
9 Alfred W. Brien vs. Same, (No. 3393,) 40 bales.
John L. Hebron's assignee vs. Same, (No. 3399,) 30 bales.
J. W. Maybin's assignee vs. Same, (No. 3400,) 400 bales.
Armstead Burwell vs. Same, (No. 3419,) 118 bales.
John Willis vs. Same, (No. 3421,) 125 bales.
Wm. E. Hall vs. Same, (No. 3424,) 300 bales.
James Meagher vs. Same, (3439,) 69 bales; and for 45 bales specifically traced, $14,759.90.
Mary W. Thomas vs. Same, (No. 3466,) 112 bales.
Thomas H. Jett vs. Same, (No. 3470,) 25 bales.
George Hawkins vs. Same, (No. 3473,) 15 bales.
James J. Cowan, administrator, vs. Same, (No. 3474,) 120 bales.
Benjamin Harwood vs. Same, (No. 3498,) 75 bales.
Ann Maria Ragsdale vs. Same, (No. 3501,) 100 bales.
Alexander Hutchinson vs. Same, (No. 3510,) 130 bales.
John R. McAlpine vs. Same, (No. 3511,) 100 bales.
Isaac R. Wade vs. Same, (No. 3545,) 21 bales.
Clarissa Young vs. Same, (No. 3550,) 116 bales.
Ann Eliza Routh vs. Same, (No. 3413,) 75 bales.

THIRD FUND, AT $111.97.

E. E. Mount, administratrix, vs. The United States, (No. 3165,) 5 bales.
Frederick A. Metcalf, administrator, vs. Same, (No. 3539,) 55 bales.
Robert M. Douglas et al. vs. Same, (No. 9740,) 1,457 bales.
Wm. F. Smith vs. Same, (No. 3486,) 15 bales.

And it is further ordered that the engrossed and consolidated copy of the reports of the commissioner as amended by this order, filed herewith, stand as the findings of fact of the court.

And it is further ordered that there be allowed and paid to the commissioner by the several parties for whom judgment is now directed, for his fees and expenses, including those of Enoch Totten, esq., his legal assistant, the sum of $6,000, to be apportioned pro rata among the

said several claimants, according to the amounts of their respective judgments as hereby directed. That $2,000 of said allowance be paid by the commissioner to his said assistant, Enoch Totten, esq., and that the entry of judgment in each case will be suspended until the claimant produces the commissioner's receipt for the party's ratable share of the allowance to the commissioner.

By the court.

10 J. B. BRABSTON *vs.* THE UNITED STATES. } 3196.

Findings of fact and conclusions of law.

CONSOLIDATED REPORT OF SPECIAL COMMISSIONER.

In pursuance of the order of this court, dated on the 4th day of June, 1873, appointing me a special commissioner for certain purposes therein set forth, I submit the above-entitled causes and the following report, embracing transactions in regard to cotton captured in the State of Mississippi during the years 1863, 1864, and 1865, the records not exhibiting any captured in the year 1862.

During the years 1863, 1864, and 1865, fourteen thousand three hundred and thirty-five (14,335) bales of cotton were captured and taken from the owners in the State of Mississippi. The parcels of different owners were, except as hereinafter specifically stated, so that the identity of each parcel was destroyed and the property of each owner could not be traced. While in transitu large quantities were stolen, destroyed, taken for military purposes, and otherwise lost from the mass. The remainder, amounting to twelve thousand seven hundred and twenty-two, (12,722,) has been accounted for in the accounts rendered by William P. Mellen, supervising special agent of the Treasury Department, and by Captains A. R. Eddy and G. L. Fort, officers of the Quartermaster's Department, viz:

		Bales.
Mr. Mellen's accounts		9,664
Captain Eddy's accounts		947
Captain Fort's accounts		2,111
In all		12,722
Of which there were released in kind to various persons	2,100	
There were burned, lost, or otherwise disposed of, as is shown in a tabulated statement marked Exhibit No. 1, and appended hereto	259	
		2,359
And the number of bales sold is:		
By Mr. Mellen	7,439	
By Captain Eddy	813	
By Captain Fort	2,111	
		10,363
Out of the above proceeds there were nominally released, as hereinafter stated, by the officers of the United States to various persons claiming to have been the owners of some of the cotton sold	1,497	

The number of which the net proceeds were paid for collecting portions of the cotton sold, is.....	139¾	
The number included in judgments entered in the United States Court of Claims, is.....	2,702	
		4,338¾
And the number, the net proceeds of which, including custom-house fees and internal-revenue tax, remain available to meet judgments of the Court of Claims, is.....		6,024¼

The proceeds derived from the 10,363 bales sold are—

By Mr. Mellen.....	7,439	"	$2,295,933 66
By Captain Eddy.....	813	"	247,143 08
By Captain Fort.....	2,111	"	429,663 39
	10,363		2,972,740 13

The expenses charged against the same are—

By Mr. Mellen:			
Freight, &c.....	$207,346 44		
Custom-house fees.....	117,862 93		
Internal-revenue tax ...	26,746 24		
		$351,955 61	
By Captain Eddy:			
Auctioneer's fees, &c.....		2,842 41	
By the Treasury Department, as properly chargeable against proceeds of the sale by Captain Fort:			
Freight.....	$16,888 00		
Int. rev. tax...	2,315 46		
		19,203 46	
Of which the amount remitted on payment of judgments in the Court of Claims is:			
11 In favor of Samuel Worthington's administratrix	$8,331 29		
In favor of Wm. W. Worthington	2,272 17		
		10,603 46	
Leaving as chargeable against the proceeds of the sale of 1,075 of the 2,111 bales sold..		8,600 00	
			363,398 02
The net proceeds in which charges for custom-house fees and internal-revenue tax are included are.....			2,609,342 11
And the like proceeds in which these charges are excluded are.....			$2,753,951 28
From out of such net proceeds officers of the United States have paid and there is otherwise involved—			
1. To various persons claiming to be owners of cotton so sold, the proceeds of 1,497 bales, amounting to.....		$408,200 80	

2. To various persons for collecting portions of the cotton sold	30,825 72	
3. Involved in appeal pending in the United States Supreme Court in the Elgee case	16,309 08	
4. The net proceeds due to 2,702 bales and involved in judgments entered in the United States Court of Claims amounts to	888,487 35	
5. The net proceeds due to 45 bales specifically traced are	14,759 90	
		1,358,582 85
And the balance in the Treasury available to payment of judgments in the Court of Claims is		1,395,368 43

By reference to said tabulated statement, marked "Exhibit No. 1," the above facts will be seen fully set out.

As to the 1,497 bales nominally released to the owners, the following facts are found: At various times after the sales of cotton, and while the proceeds were on deposit with the assistant treasurer of the United States at Cincinnati, and were subject to the draft or order of the supervising special agent of the Treasury, persons would appear claiming to have been the owners of some of the cotton which had been sold, and produce affidavits to prove their title. On being satisfied of their loyalty, the Secretary of the Treasury would direct the supervising special agent to release to the applicant the proceeds of a specified number of bales, deducting therefrom the custom-house fees and internal-revenue tax. The special agent would thereupon pay to the applicant, out of the moneys subject to his draft, as before stated, the amount which he supposed represented the avails of the applicant's cotton, deducting, however, the custom-house fees and internal-revenue tax. But in making these estimates the special agent did not take into account the losses to which the mass of cotton had been subjected before it came into his hands. Consequently, while he nominally released the proceeds of a given number of bales, less the custom-house fees and internal-revenue tax, he really released the proceeds of a much larger number. Therefore, after the custom-house fees and internal-revenue tax had been deducted, there was released, as representing 1,497 bales, the sum of four hundred and seven thousand six hundred and eighty-eight dollars and seven cents, ($407,688.07,) as above shown, giving an average of $272.33 per bale.

To arrange the cotton referred to, and the corresponding proceeds into funds, is a task of no little delicacy. There is so much uncertainty connected with the facts, and the various lots are so confused and intermingled, that it is only possible to approximate, and we are compelled to grope in the dark and separate the cotton into funds with such imperfect lights as we have before us. I have divided the cotton captured in Mississippi into eight separate funds, and in so doing have taken the cotton remaining on hand only.

The cotton paid out for collecting, burned or lost, and released in kind, or in net proceeds, has been excluded from the various funds; but the cotton disposed of by the court has been included in the fund, except the cotton in controversy in the case of Woodruff, Bouchard & Elgee, and the funds arising therefrom. This case being undecided, on appeal, the property has been excluded from the funds.

In cases where the net proceeds of cotton were released by the Treasury agents to persons claiming to own them, the amounts assessed for custom-house fees and internal-revenue taxes were always retained by the Government. In this report such sums, so retained, have been considered and counted as a part of the fund.

12 FIRST FUND.

The most of the cotton included in this report was captured in the vicinity of Vicksburgh, Mississippi, and was transported to that city. From there it was shipped generally to Memphis, Tennessee, and thence to Saint Louis and Cincinnati, for sale.

The collection of cotton in that locality began in June, 1863, about the time the Army surrounded the city of Vicksburgh, and continued until about July, 1865. A very large quantity of captured cotton was used by the Army of the United States for defensive purposes in the vicinity of Vicksburgh. After the surrender of Vicksburgh, this cotton, or as much of it as could be saved, was collected and transported to Vicksburgh. The work of gathering cotton from the defenses around Vicksburgh continued until about the 1st of November, 1863, and after that date small quantities were received, and even as late as March, 1864, a few bales were dug out and brought in from those defenses.

The testimony shows that, during the strife in the counties surrounding Vicksburgh, the people were in the habit of concealing their cotton in swamps and forests, to protect it from the torches of the confederates and also from the hands of the Union Army. During the latter part of the year 1863, and during the year 1864, much of this concealed cotton was discovered by the military forces of the United States, and by the Treasury officials, and was seized and conveyed by them to Vicksburgh and to Natchez.

Neither the records of the Department nor the depositions of witnesses filed in the various cases enable me to determine how long the various lots of cotton remained in Vicksburgh before shipment to the North for sale. But I find that large masses of cotton were stored in warehouses and piled up on wharves in Vicksburgh for indefinite periods of time, and I am led to the belief that large quantities of cotton were retained in Vicksburgh many months before shipment to Memphis, Saint Louis, and Cincinnati.

I find that a large quantity of cotton was, immediately after seizure, sent to Natchez, but the greater part if not all of such cotton was reshipped, sooner or later, to Vicksburgh; at this point it was intermingled with the mass of cotton accumulated in that city, except as to lot 121, hereinafter mentioned.

I have, therefore, arranged the cotton shipped from Vicksburgh and Natchez, during the years 1863 and 1864, into one fund, and have called it the first fund, to answer to claims for cotton seized and sent to those two points during those two years. Two expeditions were sent up the Yazoo River, one in 1863, under General Herron's command, and the other in 1864, under the command of Colonel Coates. Both of these expeditions captured cotton, which was shipped down the Yazoo River to Vicksburgh, and I have, therefore, included it in the fund under consideration.

A small lot of cotton, consisting of fifteen bales, was brought to Memphis, by a steamboat, in August, 1863; of these, twelve bales were saved from burning at Perkins's Landing, and three picked up in the Yazoo River. This cotton undoubtedly was the property of the people residing

in the vicinity of Vicksburgh, who contributed to cotton which forms the first fund, and I have, therefore, assigned the lot to said fund.

Some of the cotton captured in the vicinity of the railroad-bridge over the Big Black River, in June, 1863, was conveyed on wagon-trains to Haines's Bluff; such cotton, I think, eventually went into Vicksburgh, and I have, therefore, included it in the first fund.

In every case where the evidence shows the seizure of cotton, and the shipment thereof to Vicksburgh or Natchez, during the years 1863 and 1864, I have recommended the payment of the allowance out of this fund. All of the cotton allowed to claimants out of this fund, except in two cases, was captured on and before the 1st day of March, 1864. In the two cases so excepted, the cotton was captured in July and September, 1864. In view of the great uncertainty as to the time of shipment from Vicksburgh, and the impossibility of tracing the cotton of the various claimants into specified lots, I deem this to be the only just method of distributing the fund.

I have prepared and filed herewith a paper, marked "Exhibit No. 2," showing the lots of cotton put into the first fund, the date of shipment, the judgments of the court, and the number of bales remaining available; to which reference is made.

After deducting the amounts recovered in judgments of the court heretofore rendered, and the amount released by the Treasury, there will remain a balance in the Treasury derived from cotton, which has been segregated as belonging to the first fund, amounting to $948,313.30, and this is designated for the purposes of this report as the first fund. The number of bales segregated as above and represented by this fund is 5,341, giving as the price per bale which should be recovered by claimants, $177.55.

13 FIRST FUND.

From the first fund must be deducted the following judgments of the Court of Claims, and also the amount specifically traced in favor of James Meagher, that is to say:

Judgments:			
Michael Slattery	1	bale	$320 55
John A. Kline, administrator	560	bales	125,300 00
Clarissa Ashford	83	bales	23,589 43
Warren R. Dent	75	bales	17,923 90
Woodruff, Bouchard and Elgee	572	bales	366,170 83
J. W. Vick	17	bales	1,356 10
Thomas P. Rubey	8	bales	1,210 48
J. B. Christian's administrator	20	bales	7,685 75
Benj. Rouch's executor	69	bales	8,907 69
	1,405		552,464 73
Specifically traced and allowed to James Meagher	45	bales	14,759 90
Loss to this fund from custom-house fees and internal-revenue tax, lot 136			512 73
	1,450		567,737 36
Whole number of bales allotted to this fund	5,078¼		1,516,050 66
Deduct judgments as above, special allowance to Meagher, and loss to fund	1,450		567,737 36
Available	3,628¼	bales	948,313 30

J. B. BRABSTON
vs.
THE UNITED STATES. } No. 3196.

This suit is prosecuted to recover the proceeds of thirty-two bales of cotton.

The proof shows that the claimant owned and was possessed of about sixty bales of cotton before the fall of Vicksburgh, in 1863, in Warren County, Mississippi, and that, a few days before the fall of Vicksburgh, the whole lot of cotton was seized by the officers and soldiers of General Osterhaus's command, and was taken to Big Black Bridge, and there was mingled with other cotton. It then lost its identity, but must be taken to have gone into the mass of cotton captured at and shipped from Big Black Bridge to Vicksburgh.

The plaintiff is entitled to the proceeds of thirty-two (the number claimed) bales of cotton, at the average price per bale, payable out of the first fund.

32 bales of cotton, at $177.55 per bale..... $5,681 60

Respectfully submitted to the honorable Court of Claims by—

E. EVELETH,
Commissioner.

WASHINGTON, D. C., *March* 2, 1875.

14 *Exhibit No. 1, referred*

General account or recapitulation relative to captured or abandoned cotton derived from the Wm. P. Mellen, sup. spec'l agent Treasury Department, and by Captains A. R.

Accounts referred to.		Received.		Lost or stolen.	Transferred for hospital purposes.	Burned at depot near Vicksburg.	How disposed of not specifically traced.	Released in kind.	Bales.	Parts.	Pounds.	Gross proceeds.	Charges.
No.	County, &c.	Bales.	Parts.										
	Warren	944	..	..	..	..	..	..	944	..	345,038	212,655 72	31,315 79
	Hinds	216	..	..	..	..	..	128	88	..	36,070	12,336 46	2,227 80
	Tishamingo	124	13	..	..	..	..	..	124	13	57,951	26,716 99	2,485 65
	Bolivar	916	2	..	..	..	..	748 & 2 parts.	168	..	66,709	31,061 08	5,155 88
	Yazoo	1,827	6	..	..	..	..	..	1,827	6	859,383	459,298 10	54,219 43
	Holmes	16	..	..	..	..	..	..	16	..	6,106	2,450 87	559 42
	Adams	319	..	..	1	1	..	..	317	..	130,387	127,651 85	16,008 66
	Claiborne	266	..	..	..	..	..	..	266	..	104,413	56,812 28	10,946 23
	Issaquena	205	..	..	..	..	..	94	111	..	44,604	33,661 84	4,661 89
	Washington	125	..	..	..	..	..	..	125	..	47,805	22,196 42	5,450 53
	Tunica	51	..	..	..	..	..	..	51	..	22,765	12,784 08	2,060 07
	Jefferson	100	..	..	..	..	..	..	100	..	40,052	27,240 40	4,142 91
	Coahoma	809	24	..	..	..	..	372	437	24	186,357	151,426 37	17,071 75
	Wilkinson	582	..	..	..	..	..	..	582	..	276,458	479,340 75	107,162 29
	Without specific information necessary to determine the county from which taken	3,164	5	1	23	82	151	624	2,283	5	831,211	640,370 45	88,487 31
		9,664	50	1	24	83	151	1,966 & 2 parts.	7,439	48	3,055,309	2,295,933 66	351,955 61
First..	To which add the following: Cotton taken to Memphis, Tennessee, on the 5th of April, 1863, on the steamboat "Empress," and understood to be the same lot of cotton seized by Capt. E. D. Osband, 4th Illinois Cavalry, (bales) 2,180 Less sixty-nine bales transferred by Capt. Fort to Thos. H. Yeatman, Treas'y agt. at Memphis, and by him to W. P. Mellen..... 69												
Second	Per acct. herewith, marked "G. L. F."	2,111	..	..	..	..	..	..	2,111	..	.....	429,663 39	8,600 00
	Sales by Capt. A. R. Eddy per acct. herewith, marked "A. R. E."	974	..	..	..	..	..	134	813	..	.....	247,143 08	2,842 41
		12,722	50	1	24	83	151	2,100 & 2 parts.	10,363	48	3,055,309	2,972,740 13	363,398 02

to in report.

State of Mississippi, proceeds of sales of which are accounted for in accounts rendered by Eddy and G. L. Fort, officers of the Quartermaster's Department, U. S. Army.

Net proceeds.	Released in net proceeds.		Paid for collecting.		Judgments in Court of Claims.		Remaining available.			
							Quantity.		Net proceeds including C. H. fees and int. rev. tax.	Net proceeds excluding C. H. fees and int. rev. tax.
	Amount.	Due to bales.	Amount.	Due to bales.	Amount.	Bales.	Bales.	Parts.		
181, 339 93	20, 693 67	129	8, 233 80	39¾	125, 620 55	561	214½	...	26, 791 91	42, 284 64
10, 108 66	.....	.....	.....	.....	.....	.....	88	...	10, 108 66	10, 830 08
24, 231 34	.....	.....	.....	.....	.....	.....	124	13	24, 231 34	25, 457 44
25, 905 20	25, 905 20	168	.....	.....	.....	.....	.....	...	.....	3, 001 91
405, 008 67	41, 363 58	176	.....	.....	.....	.....	1, 651	6	363, 645 09	401, 174 26
1, 891 45	.....	.....	.....	.....	.....	.....	16	...	1, 891 45	2, 013 07
111, 643 19	75, 877 74	159	6, 725 25	31	.....	.....	127	...	29, 040 20	35, 986 46
45, 866 05	8, 558 56	72	7, 440 35	31¾	.....	.....	162½	...	29, 867 14	34, 094 83
28, 999 95	23, 896 83	91	.....	.....	.....	.....	20	...	5, 103 12	7, 277 67
16, 745 89	1, 663 45	7	.....	.....	1, 356 10	17	101	...	13, 726 34	16, 076 58
10, 724 01	9, 208 54	41	.....	.....	.....	.....	10	...	1, 515 47	2, 545 79
23, 097 49	.....	.....	5, 173 59	25	17, 923 90	75	.....	.....	.....	.....
134, 354 62	128, 478 02	415 & 2 parts.	.....	.....	.....	.....	22	11	5, 876 60	15, 242 67
372, 178 46	.....	.....	.....	.....	366, 170 83	572	10	...	6, 007 63	6, 286 03
551, 883 14	72, 042 48	239	3, 252 73	12¼	23, 589 43	83	1, 948¾	5	452, 998 50	496, 832 09
1, 943, 978 05	407, 688 07	1, 497 & 2 parts.	30, 825 72	139¾	534, 660 81	1, 308	4, 494½	35	970, 803 45	1, 099, 103 54
421, 063 39	.....	.....	.....	.....	210, 850 42	1, 036	1, 075	...	210, 212 97	210, 212 97
244, 300 67	.....	.....	.....	.....	125, 172 20	358	455	...	119, 128 47	119, 128 47
2, 609, 342 11	407, 688 07	1, 497 & 2 parts.	30, 825 72	139¾	870, 683 43	2, 702	6, 024½	35	1, 300, 144 89	1, 428, 444 98

15 *Exhibit No. 2, with second report of special commissioner.*

FIRST FUND.

Cotton shipped from Vicksburgh and Natchez during the years 1863 *and* 1864, *and from Haines's Bluff and Perkins's Landing, in August,* 1863.

Lot.	Shipped.			Bales.		Amount available.
	From—	To—	When.			
			1863.			
92	Vicksburg	St. Louis	July	46	.....	$8,501 62
109	"	Memphis	" 30	18¼	.....	4,624 64
				666	.....	164,458 00
				5 parts	.....	.....
G.		St. Louis	August	507 &	.....	123,678 24
				61	.....	3,548 71
					.....	15,566 19
				10	.....	2,009 43
108	Haine's Bluff	Memphis	" 6	.....	.....	1,754 51
120	Vicksburgh	St. Louis	"	284	.....	78,702 81
118	Perkins' Landing	Memphis	" 20	15	.....	3,279 22
N. U. S. R.	Vicksburg	St. Louis	" 30	100½	.....	22,844 84
121	"	Memphis	" 31	1,362	.....	387,095 25
151	"	Cinn. & St. Louis	" 31	.....	.....	3,884 95
146	"					
V. 6	"					
147	"	"	" "	45	.....	14,759 90
145	"	"	" "	.....	.....	671 63
144	"	"	" "	23	.....	6,785 06
V. 9	"	"	" "	37	.....	7,921 34
V. 1	"	St. Louis	Sept. 4	68	.....	8,301 73
140	"	"	" 19	36⅜	.....	10,613 48
V. 12	"	"	Oct. 12	.....	.....	68 22
V. 11	"	"	" "	.....	.....	128 79
V. 3	"	"	" 16	21	.....	5,008 46
V. 8	"	"	" "	35	.....	8,122 30
V. 10	"	"	" 18	552	.....	117,574 06
V. 14	"	"	" 27	27	.....	4,568 69
V. 17	"	"	"	6	.....	890 19
			1864.			
V. 32	"	"	March 3	5	.....	816 94
			1863.			
V. 7	"	"	Oct. 16	1	.....	342 24
152	"	Memphis	" 20	.....	.....	980 10
V. 5	"	St. Louis	" 16	.....	.....	120 47
158	"	"	" 23	4	.....	1,240 20
V. 24	Natchez	Vicksburg	" "	12	.....	2,323 61
V. 46	Vicksburg	Cincinnati	Oct.	.....	.....	312 42
V. 35	"	"	Dec.	5	.....	367 75
V. 25	"	"	" 23	17	.....	2,318 62
V. 26	Natchez	"	" "	3	.....	570 22
V. 27	"	"	" "	2	.....	313 91
			1864.			
N. 3	"	St. Louis	Jan'y 29	47½	.....	11,890 74
N. 7	"	"	.....	45½	.....	10,590 02
180	Vicksburg	Memphis	Feb'y	4	.....	1,181 52
			1864.			
V. 33	Vicksburgh	Cincinnati	M'ch 3	13	.....	1,494 69
V. 36	"	"	"	75	.....	17,923 90
V. 38	"	"	" 2	95¼	.....	25,426 18
N. 10	Natchez	"	Apr. or May	.....	.....	3,497 52
N. 11	"	"	June 10	10	.....	6,286 03
N. 12	"	St. Louis	"	572	.....	366,170 83
V. 45	Vicksburgh	"	Nov.	3	.....	44 76
195	"	Memphis	Dec.	.....	.....	402 30
V. 51	"	"	"	5	.....	1,293 41
V. 52	"	"	"	5	.....	1,499 11
V. 49	"	"	"	8	.....	2,379 62
V. 50	"	"	"	11	.....	2,379 98
53	"	"	"	17	.....	1,738 24
N. 14	"	"	"	17	.....	6,800 44
			1863.			
V. 15	"	St. Louis	Oct. 27	.....	.....	313 70
74	Chickasaw Bayou	Memphis	June	180	.....	40,668 93
				5,078¼	.....	1,516,050 66

Judgments:		
Michael Slattery	1 bale	$320 55
John A. Kline, administrator	560 bales	125,300 00
Clarissa Ashford	83 "	23,589 43
Warren R. Dent	75 "	17,923 90
Woodruff, Bouchard and Elgee	572 "	366,170 83
J. W. Vick	17 "	1,356 10
Thomas P. Rubey	8 "	1,210 48
I. B. Christian's adm'r	20 "	7,685 75
Benj. Roach's ex'r	69 "	8,907 69
Specifically traced	45 "	14,759 90
Loss to this fund		512 73
	1,450	567,737 36
Available	3,628¼ bales	$948,313 30

16 *Exhibit No. 10, with second report of special commissioner.—Schedule of cases in which allowances are made.*

No.	Names of claimants.	Place of capture.	Date of capture.	Shipped to—	Bales claimed.	Bales allowed.	Amount allowed.
	PAYABLE OUT OF FIRST FUND.						
3150	Ellen D. Batchelor ..	Warren County ...	June, 1863	Vicksburg .	51	51	9,813 42
3162	John H. Newman ...	" "	" 15, "	"	50	50	9,621 00
3175	J. Reese Cook	" "	" "	"	40	40	7,696 80
3184	Charlotte Spear	Hinds County.....	May, "	"	70	70	13,469 40
3194	Duff Green.....	Warren County ...	June, "	"	19	19	3,655 98
3197	Sarah Cowan.....	" "	" "	"	48	48	9,236 16
3199	E. B. Willis.....	" "	" "	"	40	40	7,696 80
3400	John W. Maybin	" "	May or June, "	"	402	400	76,968 00
3419	A. Burwell.....	" "	May, "	"	118	118	22,705 56
3470	Thomas H. Jett.....	" "	June, "	"	25	25	4,810 50
3474	J. J. Cowan, adm'r ..	" "	June, "	"	129	120	23,090 40
3511	Jno. R. McAlpine ...	Claiborne County .	May or June, "	"	100	100	19,242 00
3182	Thomas Kidd, guardian.	Hinds County.....	" " "	"	64	64	12,314 88
3191	Thomas Kidd	" "	May, "	"	480	480	92,361 60
3510	Alex. Hutchison	Claiborne County .	June, "	"	130	130	25,014 60
3176	Thos. A. Marshall...	Warren County ...	July, "	"	30	22	4,232 24
3399	John L. Hebron.....	" "	July or Aug., "	"	30	30	5,772 60
3473	George Hawkins	" "	July, "	"	96	15	2,886 30
3421	John Willis	Yazoo County.....	" "	"	125	125	24,052 50
3192	C. H. Harrison	" "	" "	"	228	200	38,484 00
3393	A. W. Brien.....	Warren County ...	July or Aug., "	"	40	40	7,696 80
3174	Juliet Glass.....	" "	Aug. 4, "	"	18	18	3,463 56
3179	Richard Taylor.....	" "	" "	"	25	6	1,154 52
3439	James Meagher	Hinds County.....	Aug. or Sep., "	"	114	69	13,276 98
3188	Mary P. Marye.....	Sunflower County.	July, 1863	Vicksburg .	45	45	8,658 90
3501	Maria Ragsdale	" "	" "	"	100	100	19,242 00
3466	Mary W. Thomas ...	Yazoo County	" "	"	112	112	21,551 04
3196	J. B. Brabston	Warren County...	June, "	"	32	32	6,157 44
3424	Wm. E. Hall	Claiborne County .	Jan'y 18, 25, 1864	"	317	300	57,726 00
3545	Isaac R. Wade	" "	.....	"	21	21	4,040 82
3550	Clarissa Young.....	" "	Feb'y 20, "	"	116	116	22,320 72
3554	Martha Crane	" "	" " "	"	235	235	45,218 70
3170	E. K. McLean.....	Carroll County....	" 14, "	"	21	21	4,040 82
3480 3354	Henry Bodenheim...	Yazoo County.....	" " "	"	183	90	17,317 80
3557	Dan'l J. Dohan.....	Claiborne County .	.....	"	138	138	26,553 96
3498	Benj. Harwood	" "	March 1, "	"	75	75	14,431 50
3499	James A. Hutchinson	" "	" "	"	65	65	12,507 30
3183	James Stewart	Jefferson County..	March, "	Natchez....	70	70	13,469 40
3293	Emma J. Jones.....	Warren County ...	September, "	Vicksburg .	100	100	19,242 00
3171	Thomas Y. Berry....	Claiborne County .	Feb'y 28, "	Natchez....	149	149	28,670 58
3229	Seth H. Kellogg.....	" "	July 16, "	"	714	714	137,387 88
2539	Rob't G. Johnson....	Yazoo County.....	Feb'y 14, "	Vicksburg .	149	149	28,670 58
					5,114	4,812	925,925 04

And upon the foregoing findings of fact, the court decides the following as its—

CONCLUSIONS OF LAW.

1. The counsel for the Government not having taken steps to consolidate suits where the parties were seeking to recover the proceeds of

their property out of a common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants have been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific property of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

By the court.

17 In the Court of Claims.

J. B. BRABSTON
vs.
THE UNITED STATES. } No. 3196.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office August 19, 1875, and of the order of the chief-justice of said court allowing the same; of the order of the court, made May 24, 1875; of the findings of fact by the court, and of the conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-fourth day of January A. D. 1876.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 913. The United States, appellants, vs. J. B. Brabston. Court of Claims. Filed 26 January, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

No. 908. THE UNITED STATES, APPT., vs. JNO. B. RAYMOND, ASSIGNEE, &C.
911. " " " " " THOMAS KIDD.
912. " " " " " J. J. COWAN, ADMR., &C.
913. " " " " " J. B. BRABSTON.
914. " " " " " CHARLOTTE SPEAR.
915. " " " " " E. K. McLEAN.
916. " " " " " J. REESE COOK.
917. " " " " " ELLEN D. BATCHELOR.
918. " " " " " GEORGE HAWKINS.
919. " " " " " J. J. COWAN, ADMR., &C.
921. " " " " " ROBERT G. JOHNSON.
922. " " " " " WM. F. SMITH.
924. " " " " " HANNAH BODENHEIM.

APPEALS FROM THE COURT OF CLAIMS.

On consideration of the motion of counsel for the appellees, it is ordered & directed that the several records in the above-named cases be remanded to the Court of Claims, with directions to said court to certify in each of said cases, to wit:

1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburg, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

2nd. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati & St. Louis, for and on behalf of the United States.

And that the said Court of Claims make due return in the premises.

28 March, 1876.

True copy.

[SEAL.] Test: D. W. MIDDLETON,
Clerk Sup. Court U. S.

J. B. BRABSTON
v.
THE UNITED STATES.

Supplemental finding of fact.

The Court of Claims, pursuant to the order of the Supreme Court made March 28th, 1876, requiring this court to make and certify as to certain facts in this case, does now make and certify to the Supreme Court the following supplemental facts:

First, and in response to the instruction of the Supreme Court to find "whether the cotton owned by the claimant and seized from him by the United States, did or did not constitute a part of the cotton delivered to, and received by, the Treasury agent at Vicksburg, Miss., during the year 1863 and 1864," the Court of Claims finds as follows:

The cotton owned by the claimant, and seized from him by the United States, was carried away from his plantation, a few
2 miles from Vicksburg, under guard, in Government wagons, to the headquarters of General Osterhaus, at Big Black Bridge, whence it was transported, under the guard of United States soldiers, toward Vicksburg, as detailed in the previous findings. It is not specifically traced in the evidence to official custody of the Treasury agent at Vicksburg, nor to the official custody of any military officer, and from the circumstances attending its seizure and shipment it cannot be so traced. But the Treasury agent at Vicksburg received a large quantity of cotton captured by General Osterhaus belonging to unknown persons, and neither the loss of the claimant's cotton, nor its shipment to any other point, is shown by the defendants. The Court of Claims, upon these facts, and the presumptions therefrom arising, finds, though without there being direct proof of the ultimate fact, that the cotton owned by the claimant constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set forth in the commissioner's report, which forms a part of the previous
3 findings of the court.

Second, and in response to the instructions of the Supreme Court, to find "whether or not the same was there intermingled with other cotton belonging to other parties so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized," the Court of Claims finds as follows:

The cotton so seized was intermingled with other cotton, belonging to other persons, immediately after capture and before shipment, so as to destroy the identity of the several lots; and the various shipments from different points were subsequently intermingled, in whole or in part, at Vicksburg, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points; and it is likewise impossible to ascertain the specific rate at which he should recover except by throwing the whole into a common mass, as has been done in the report of the commisioners forming part of the previous find-
4 ings of the court.

Third. And in response to the instructions of the Supreme Court to find, "whether the proceeds of the sales of the cotton owned by and seized from the claimant in this case do or do not constitute a part of

the fund found to be in the Treasury of the United States accruing from the sales of the said intermingled mass of cotton so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati and St. Louis for and on behalf of the United States," the Court of Claims finds as follows:

There is no direct evidence to show that the claimant's cotton continued in or was separated from the mass of intermingled cotton at Vicksburg, but the whole of said mass was shipped from there and was sold at St. Louis and Cincinnati, less certain losses of unidentified cotton with which the fund had been duly charged, and on these facts and the presumptions therefrom arising, but without direct proof of the ultimate fact, the court finds that the proceeds of the sales of the claimant's cotton do constitute a part of the fund found to be in the Treasury accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg and sold at St. Louis and Cincinnati, more particularly set forth and described in the report of the commissioner which forms a part of the previous findings of the court.

In the Court of Claims, December term, 1875.

John B. Raymond, assignee, &c.,	v. The United States.
Thomas Kidd	vs. Same.
J. J. Cowan, admr. of Sarah Cowan,	" Same.
J. B. Brabston	" Same.
Charlotte Spear	" Same.
E. K. McLean	" Same.
J. Reese Cook	" Same.
Ellen D. Batcheler	" Same.
George Hawkins	" Same.
J. J. Cowan, admr. of John Cowan	" Same.
Robert G. Johnson	" Same.
William F. Smith	" Same.
Hannah Bodenhiem	" Same.

The Court of Claims, in obedience to the order of the Supreme Court of the United States hereunto annexed and returned, makes these its supplemental findings of fact in each of the causes aforesaid.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 3rd day of April, 1876.

JOHN RANDOLPH,
Asst. Clk. Court of Claims.

O